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AUTHORITIES CITED

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In the Supreme Court of the United States

OCTOBER TERM, 1948

No. 677

FRED P. WEISSMAN, AN INDIVIDUAL d/b/a FRED P. WEISSMAN COMPANY AND FRED P. WEISSMAN COMPANY, A CORPORATION, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINION BELOW

The opinion of the court below (R. 530-535) is reported in 170 F. 2d 952. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 40-78, 88-97) are reported in 69 N. L. R. B. 1002.

JURISDICTION

The decree of the court below was entered on November 29, 1948 (R. 529). The Company's peti-

tion for rehearing was denied on January 3, 1949 (R. 539). The jurisdiction of this Court was invoked under Section 1254 of 28 U. S. C., and Section 10 (e) of the National Labor Relations Act, as amended.

QUESTIONS PRESENTED

1. Whether there is substantial evidence to support the Board's finding that the Union's efforts to organize petitioners' employees were peaceful and bona fide.

2. If the above question is answered in the negative, whether the misconduct of the Union deprived the Board of jurisdiction to remedy petitioners' unfair labor practices.

STATUTES INVOLVED

The pertinent provisions of the National Labor Relations Act (49 Stat. 449, 29 U. S. C. 151, *et seq.*), and of the Labor Management Relations Act of 1947 (61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*) are set forth in the Appendix, *infra*, pp. 11-12.

STATEMENT

Upon the usual proceedings under Section 10 of the National Labor Relations Act, the Board, on July 31, 1946, issued its findings of fact, conclusions of law, and order (R. 88-97). The pertinent facts, as found by the Board, may be summarized as follows:

Fred P. Weissman was formerly engaged in New York City in the manufacture of women's

coats (R. 45; 288, 352-353).[1] While there engaged, he was bound by the terms of a collective bargaining agreement with the International Ladies' Garment Workers Union, AFL, herein called the Union (*ibid.*). In May or June of 1940, Weissman moved to Cincinnati and there resumed manufacturing operations as Fred P. Weissman, d/b/a Fred P. Weissman Company,[2] herein called the Company (R. 45; 290-291). Shortly thereafter, a dispute developed between the Company and the Union as to whether Weissman had fully discharged his obligation to the Union pursuant to his contract before leaving New York (R. 45-46; 479-480). The Union sought to persuade the Company to return to New York (R. 47-48; 288-290, 356). The Union also asked the Company to hire workers referred to it by the Cincinnati local of the Union (R. 46; 478-479). When the Company refused to accede to the Union's requests, the Union picketed the Company's plant (R. 46; 479, 481-482). The Company thereupon abandoned its Cincinnati operations, and in August 1940 opened a plant in Lawrenceburg, Indiana (R. 46; 317). The Union then picketed the Lawrenceburg plant (R. 46;

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[1] References before the semicolon are to the Board's findings as set forth in the Board's decision; references after the semicolon are to the supporting evidence.

[2] Fred P. Weissman operated the business as Fred P. Weissman Company until December 1, 1945, when the Fred P. Weissman Company, a corporation, organized by Fred P. Weissman, took over the business (R. 42-43; 101, 114). The Board found that all of the unfair labor practices herein occurred before December 1, 1945 (R. 71), and, accordingly, reference will be made exclusively to the Company.

317-318), and the Company moved its business to Harrodsburg, Kentucky, where it began operations in June 1941 (R. 47; 109, 167-168, 175-178, 281-282).

In March 1945 the Union began a drive to organize the employees of the Harrodsburg plant (R. 49; 132-134, 154-155). This drive was marked by a heated campaign between the Union and anti-Union employees in which Weissman and his General Manager, Drimmer, interrogated employees concerning their union affiliations and activities (R. 49, 50; 127, 135-136, 267), and Company supervisors discouraged membership in the Union (R. 55-56; 178-179, 200, 451), and warned employees not to join any union if they wished to continue working at the plant (R. 55; 488).

On September 19, 1945, a large number of anti-Union employees assembled at the door of the plant, and by threats and force excluded employees Teater, Drury, and Springate, members of the Union, from the plant (R. 59, 88-89; 139-142, 179-182, 203-205, 221-222, 260-261, 396-397, 401, 418, 425-426, 437-438). General Manager Drimmer was present during this occurrence (R. 60-61; 185, 206, 222), and approved the conduct of the anti-Union group (R. 60-62; 252, 254-256). Supervisors Ransdell, King, Watts, and Hellard were also present, Hellard taking part in the scuffle with Teater, one of the excluded employees (R. 60; 185-186, 204-205, 223-224, 386-387, 395, 456-457, 461-462, 463-464, Tr. 827). Employee Floyd Shirley, after witness-

ing the melee, took Teater, who was injured, to a doctor (R. 59, 89; 142, 262). The following day, when Shirley was checking out at noon for lunch, he was told, in the presence of Supervisor Watts, by employee Weldon, spokesman for a group of assembled employees, that his services were no longer needed, and he was ordered not to return to the plant (R. 64; 264). Shirley did not attempt to enter the plant on his return because he knew the door was being held, and he wished to avoid trouble and the use of force (R. 90-91; 273-275).

On the morning of October 29, employee Sallee, a member of the Union, while at work was accused of engaging in union activities by a group of employees. When Sallee left the plant for lunch, the same group warned her not to return that afternoon "because the doors will be locked" (R. 65-66; 231-232). Sallee immediately advised General Manager Drimmer about her threatened exclusion, and was instructed by him to return to work after lunch, at which time he promised to meet her at the plant (*ibid.*). Sallee, after returning to the plant as instructed, found the door locked, and was again informed by the employees that she could not work at the plant because she was "for the Union" (R. 66; 232, 420, 428). When Drimmer arrived, Sallee explained to him that she was being denied the right to enter the plant (R. 66; 232). Drimmer advised Sallee there was nothing he could do for her and that she should go home (*ibid.*).

The excluded employees subsequently received termination notices stating that they had "voluntarily" quit their employment with the Company (R. 64; 120-124, 147-148, 190, 209, 235, 266, 505-508). Each of them replied to the Company by letter, denying having voluntarily quit their employment and explaining that each of them had been prevented from entering the plant. The replies stated further that they were ready, able, and willing to continue their employment. Weissman did not answer them, and these employees were never reinstated. (R. 65, 68; 347.)

Upon the basis of the foregoing facts, the Board found (R. 52, 56) that the conduct of the Company's officials and supervisors, ranging from the questioning of employees as to their union activities to outright threats of discharge because of their union affiliations and their failure to sign a petition renouncing the Union, constituted interference and coercion in derogation of the employees' statutory right to full freedom of organization, in violation of Section 8 (1) of the Act. The Board further found (R. 68-70, 91) that the Company, in violation of Section 8 (3) and (1) of the Act, discriminated against the excluded employees by acquiescing and participating in their exclusion from the plant and by refusing to remedy the discrimination by denying them reinstatement despite their request therefor, because of their activity and membership in the Union.

The Board rejected the Company's contention that the Union's efforts to organize its employees were not bona fide but merely part of an unlawful scheme to drive the Company out of business (R. 47-49; 288-290). It considered the evidence adduced by the Company to show violence and fraud on the part of the Union, but found it insufficient to establish such conduct (R. 48; 301, 307-308, 310, 317-318, 356, 358). The Board also pointed out that the evidence of such conduct related only to the years 1940 and 1941 at Cincinnati and Lawrenceburg and had no direct relationship to the organizing campaign in Harrodsburg in 1945 (R. 48-49). Accordingly, the Board determined that this evidence was insufficient to cause the Board to decline consideration of the case (R. 47-49).

The Board ordered the Company: to cease and desist from such unfair labor practices; to instruct their employees that they will not permit any employees to exclude other employees from the plant or to permit or threaten violence for such purposes; to offer reinstatement with back pay to the five employees discriminated against; and to post appropriate notices (R. 92-97).

On August 28, 1947, the Board filed a petition for enforcement of its order in the court below (R. 1-6), and on November 29, 1948, the court handed down its opinion sustaining the Board's order in full, and entered its decree of enforcement (R. 529-535).

ARGUMENT

1. The petition for certiorari is based on the assumption that the Union was using the Board's processes as part of an effort by the Union to drive the Company out of business by the use of fraud and violence (Pet. 3, 5-6, 8, 10). The Board permitted the Company to adduce whatever evidence it wished in support of its contention (R. 291-323, 352-363). The evidence adduced was all the most remote hearsay and related only to events occurring in Cincinnati and Lawrenceburg in 1940 and 1941 (*ibid.*), while the case before the Board related to events occurring in Harrodsburg in 1945. The Board accordingly rejected the Company's contention as lacking in evidential support.

The Board found that "on this record * * * the Union did not engage in fraud and violence" (R. 48); that the Union's objective in attempting to organize the Company's Harrodsburg plant was the normal one of establishing bargaining relations (R. 49, n. 12; 485); and that the Union's organizing activities were not in any manner at variance with the usual, lawful activities of labor organizations (R. 48-49). The court below in ruling upon this aspect of the case stated (R. 534):

> The Board considered the evidence in the aggregate, i.e., that relating to the enforcement of its order, as well as respondents' contention that the action of the Union was unlawful, and arrived at a well sustained inference contrary to respondents' claim. We are not authorized to nullify its decision. *Labor Board* v. *Link-*

Belt Co., 311 U. S. 584; *Nat. Labor Relations Board* v. *Nevada Consol. Copper Corp.*, 316 U. S. 105.

The petition thus presents solely a question of evidence. No issue justifying review by this Court is raised.

2. The cases of *National Labor Relations Board* v. *Donnelly Garment Co.*, 330 U. S. 219, and *National Labor Relations Board* v. *Indiana & Michigan Electric Co.*, 318 U. S. 9, upon which the Company relies (Pet. 7), hold only that the Board must receive and consider evidence of unlawful conduct by the charging union in determining whether to lend its administrative processes to remedy unfair labor practices. Here the Board did receive and consider such evidence (R. 47-49; 291-323, 352-363). As the court below pointed out, the *Donnelly* and *Indiana & Michigan* cases establish that once the Board has received and considered such evidence, the decision as to whether to entertain and proceed upon the charges rests "within the discretion of the Board" (R. 534).

CONCLUSION

The decision below, sustaining the Board's findings and order, is correct. No conflict of decisions is presented. The petition for a writ of certiorari should be denied.

Respectfully submitted,

PHILIP B. PERLMAN,
Solicitor General.

ROBERT N. DENHAM,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
RUTH WEYAND,
Assistant General Counsel,
WILLIAM W. KAPELL,
Attorney, National Labor Relations Board.

APRIL 1949.

APPENDIX

1. The relevant provisions of the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, 29 U. S. C. 151, *et seq.*) are as follows:

* * * * *

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

Sec. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

* * * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. * * *

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U. S. C., Supp. I, 141, *et seq.*) are as follows:

* * * * *

SEC. 10. * * *

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States * * * within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order * * * and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power * * * to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. * * *

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